

JAN 27 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOEL SANCHEZ OLIVARES,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-74678

Agency No. A95-877-497

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 23, 2006^{**}

Before: T.G. NELSON, SILVERMAN and BYBEE, Circuit Judges.

Respondent's motion for summary disposition is granted because the questions raised by this petition for review are so insubstantial as not to require

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

05-74678

further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard).

This petition for review was timely filed on August 11, 2005. Petitioner now asserts that his United States citizen child was born in September 2005, and that he now has a qualifying relative to establish eligibility for cancellation of removal. *See* 8 C.F.R. § 1003.2 (applicant may file a motion to reopen before the Board of Immigration Appeals based on “new facts”). However, petitioner does not dispute that at the time of his proceedings before the Immigration Judge, he lacked a qualifying relative to establish eligibility for cancellation of removal. *See* 8 U.S.C. § 1229b(b)(1)(D); *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003). Accordingly, this petition for review is denied.

All other pending motions are denied as moot. The temporary stay of removal and voluntary departure confirmed by Ninth Circuit General Order 6.4(c) and *Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004), shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED.